

ANDREW W. MISCOVICH

IBLA 70-84

Decided May 31, 1972

Appeal from decision (F-8412) by Chief, Branch of Land Appeals; Office of Appeals and Hearings, affirming rejection of timber sale application.

Reversed and remanded.

Alaska: Generally -- Alaska: Sales -- Regulations: Generally -- Regulations:
Timber Sales and Disposals

Applicability --

The Secretary of the Interior is authorized under sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) (1970) [formerly 48 U.S.C. § 421 (1958)], to promulgate regulations governing small sales of timber in Alaska which provide for competitive bidding. However, where regulations specifically provide for exclusively noncompetitive procedures for such sales, the general timber regulations, based upon 30 U.S.C. § 601 (1970) will be deemed not applicable.

Statutory Construction: Generally -- Statutory Construction: Implied
Timber Sales and Disposals

Repeals --

The admission of Alaska into the Union did not repeal the statutes particularly applicable to that state, not related to its former territorial government.

Therefore sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) [formerly 48 U.S.C. § 421 (1958)] is still in effect, despite the existence of the general timber authorization contained in 30 U.S.C. § 601 (1970). The latter Act is deemed to be inapplicable to small sales of timber in Alaska since its authority is limited to situations where the disposition of the timber "* * * is not otherwise expressly authorized by law."

APPEARANCES: James R. Blair, Esq. of Rice, Hoppner, Blair & McShea, for the appellant.

OPINION BY MR. FISHMAN

Andrew M. Miscovich has appealed to the Secretary of the Interior from a decision dated August 26, 1969, by the Chief, Branch of Land Appeals, Office of Appeals and Hearings, Bureau of Land Management,

which affirmed a decision 1/ dated April 29, 1969, rendered by Fairbanks land office rejecting his timber sale application, 2/ F-8412.

The Office of Appeals and Hearings affirmed the land office decision on the basis that, although there is a separate portion of the regulations, 43 CFR Subpart 5409 (1969), specifically applicable to Alaska, all timber sales in Alaska are also governed by the general timber sale laws (e.g. 30 U.S.C. § 601-603 (1970)) and regulations (e.g. 43 CFR 5411.1 (1969) 3/ and 5421.1 (1969) 4/ . The decision also adverted to sec. 11 of the Act of May 14, 1898, as

1/ The decision recited in pertinent portion as follows:

"After careful consideration, I have decided that-w must reject your timber sale application F-8412.

"The regulations provide that generally timber to be offered for sale requires competitive bids.

'All sales other than those specified in 5421.1 - Negotiated Sales - shall be made only after inviting competitive bids through publication and posting. (43 CFR 5411.1, Competitive sales).'

"Negotiated sales are possible, however, under certain conditions but only if in the public interest.

'When it is determined by the authorized officer to be in the public interest, he may sell at not less than the appraised value, without advertising or calling for bids, timber where the contract is for the sale of less than 250 M bd ft. (43 CFR 5421.1-a).'

"Because of the many applications we have received for timber sales along the winter road, it is clearly not in the public interest to negotiate the sale of timber. I feel the public interest requires that we advertise any timber sold in this area, as long as the demand remains."

2/ The appellant had applied to purchase 250,000 bd. ft.

3/ Now substantially embodied in 43 CFR 5401.0-6 (1972).

4/ Now substantially embodied in 43 CFR 5402.0-6 (1972).

amended, 16 U.S.C. § 615a (1970) 5/ which authorizes "[t]he Secretary of the Interior, under such rules and regulations as he may prescribe, * * * [to] cause to be appraised the timber * * * upon public lands in Alaska and [he] may from time to time sell so much thereof as he may deem proper for not less than the appraised value thereof * * * And such sales shall at all times be limited to actual necessities for consumption in Alaska from year to year * * *."

The decision of the Office of Appeals and Hearings also stated:

Authority for the disposal of timber or other forest products on public lands in Alaska was further authorized and supplemented by the terms of the Act of July 31, 1947, as amended, 30 U.S.C. 601, et seq.

In view of the broad language of these laws which granted discretion to the Secretary or his delegate to dispose of the timber, the narrow limitation placed on the timber sale regulations by the appellant is without merit, and there was no abuse of discretion by the local Bureau officials in denying the appellant's application for a negotiated timber sale. The decision of the Fairbanks office is therefore affirmed.

The first issue to be resolved is whether the general timber regulations affect timber sales in Alaska * * * "where quantities are such as will be disposed of from year to year, and the purchases are made by those who do not contemplate large-scale production

5/ Formerly 48 U.S.C. § 421 (1958).

and an expenditure of large sums of money for developing enterprises for the exportation of such timber." 43 CFR 5409.2-1 (1969), now substantially embodied in 43 CFR 5490.2-1 (1972).

In the light of the broad discretion vested in the Secretary by sec. 11 of the Act of May 14, 1898, as amended, it is crystal clear that he had authority to prescribe regulations providing for competitive sales of small amounts of timber in Alaska. But did he do so?

The reliance below on 30 U.S.C. § 601 (1970) is inapposite since that law specifically limits its operation to disposals of timber "* * * not otherwise expressly authorized by law * * *."

The admission of Alaska into the Union as a state did not vitiate the statutes particularly applicable to that state, not related to territorial government. See Solicitor's Opinion, M-36551 (February 4, 1959). Therefore, we hold that sec. 11 of the Act of May 14, 1898, as amended, is still in force and effect.

There is nothing in the general timber regulations to impel the conclusion that they were intended to be applicable to a timber sale application such as the one in issue. On the contrary, both 43 CFR

5421.1 (1969), relating to negotiated sales and granting discretionary authority to sell competitively, and 43 CFR 5411.1 (1969), reciting in part that all sales other than those specified in 43 CFR 5421.1 6/ (1969) " * * shall be made only after inviting competitive bids * * ", invoke as authority 30 U.S.C. § 601 (1970), but not sec. 11 of the Act of May 14, 1898, as amended.

Indeed, 43 CFR 5400.0-3(a)(3) (1969) 7/ and 43 CFR 5400.0-3(b)(1) (1969) 8/ specifically recognize the nonapplicability of the general regulations to small timber sales in Alaska:

(3) The sale of timber in Alaska will be made under pertinent statutes and the applicable regulation (Part 5490); however, sales of more than a two-year supply of timber for domestic use in Alaska may be authorized under the act of July 31, 1947 9/ (61 Stat. 681), as amended.

(b) Alaska sales. (1) Authority for small sales of timber for use in Alaska. Section 5490.1 is issued under authority of Sec. 11, 30 Stat. 414, as amended; 48 U.S.C. 421. Section 5490.1 is contained in Circular 1901, 20 F.R. 1216, Feb. 26, 1955; 26 F.R. 5006, June 6, 1961.

6/ It is noteworthy that this section spells out only the criteria for negotiated sales contained in 30 U.S.C. 602 (1970), except for "(b) Timber on the right-of-way of a logging road and danger trees adjacent to the right-of-way on O&C lands may be sold at not less than the appraised value without advertising or calling for bids to (1) permittee who constructs a road pursuant to a permit issued under Subpart 2234 of this chapter, or (2) a contractor who is constructing a road with Government funds."

7/ The same provisions appears in the 1972 edition of 43 CFR.

8/ See n. 7.

9/ Found in 30 U.S.C. § 601 (1970).

These regulations also demonstrate that 30 U.S.C. § 601 (1970) has no applicability where an existing law i.e., sec. 11 of the Act of May 14, 1898, as amended, is operable.

The initial denial of the application was predicated on the erroneous assumption that the timber could be offered for sale competitively and that "* * * it is clearly not in the public interest to negotiate the sale of timber. I feel the public interest requires that we advertise any timber sale in this area, so long as the demand remains." In essence, the reasons for rejection were without recognition of the applicable regulations 10/, 43 CFR, Subpart 5409 (1969).

We hold that the Secretary of the Interior is authorized under sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) (1970) [formerly 48 U.S.C. § 421 (1958)], to promulgate regulations governing small sales of timber in Alaska which provide for competitive bidding. However, since existing regulations specifically provide exclusively noncompetitive procedures for such sales, the general timber regulations, based upon 30 U.S.C. § 601 (1970) are not applicable.

10/ Obviously this decision recognizes that sales of more than a two-year supply of timber for use in Alaska may be made under 30 U.S.C. § 601 (1970), and that the Secretary may promulgate regulations under sec. 11 of the Act of May 14, 1898, as amended, to provide for competitive sales of all timber. The Secretary could have made the general timber regulations applicable to small timber sales in Alaska.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is reversed and remanded for reconsideration of the application.

Frederick Fishman, Member

We concur:

Anne Poindexter Lewis, Member

Douglas E. Henriques, Member

